

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF MICHIGAN  
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,

5 Government,

HONORABLE GEORGE CARAM STEEH

6 v.

No. 16-20098

7 KHALIL ABU-RAYYAN,

8 Defendant.

9 \_\_\_\_\_/  
SENTENCING HEARING

10 Monday, March 27, 2017

11 - - -

12 APPEARANCES:

13 For the Government:

RONALD W. WATERSTREET, ESQ.  
Assistant U.S. Attorney

14  
15 For the Defendant:

TODD A. SHANKER, ESQ.

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17  
18 *To Obtain Certified Transcript, Contact:*  
19 *Ronald A. DiBartolomeo, Official Court Reporter*  
20 *Theodore Levin United States Courthouse*  
*231 West Lafayette Boulevard, Room 238*  
*Detroit, Michigan 48226*  
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21 *Proceedings recorded by mechanical stenography.*  
22 *Transcript produced by computer-aided transcription.*  
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1 Detroit, Michigan

2 Monday, March 27, 2017

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5 **THE CLERK:** Case Number 16-20098, United  
6 States of America call Khalil Abu-Rayyan.

7 **THE COURT:** Good morning.

8 **MR. WATERSTREET:** Good morning, your Honor.  
9 Ronald Waterstreet on behalf of the United States, along  
10 with U.S. Attorney's Office paralegal Darlene Secord.

11 **THE COURT:** Welcome.

12 **MR. SHANKER:** Good morning, your Honor. Todd  
13 Shanker on behalf of Mr. Abu-Rayyan who is standing to my  
14 left.

15 **THE COURT:** Okay. Welcome. You can take a  
16 seat. I want to say that I'm sorry for the delay in  
17 getting started today. Apparently, the transport was late  
18 arriving, and so we have to have the defendant here of  
19 course. The Court has heard significant argument thus far  
20 on the application of the sentencing factors to support or  
21 not the government's request of the Court vary upwards  
22 from a guideline of 15 to 21 months to impose a sentence  
23 of 96 months, and the defendant, of course, has argued for  
24 the Court to impose an advisory guideline range sentence  
25 within the range of 15 to 21 months.

1           Mr. Waterstreet, you were speaking, I think, when  
2 we interrupted you and broke for the weather the last time  
3 we were here.

4           **MR. WATERSTREET:** Yes, I was. Thank you.

5           **THE COURT:** All right.

6           **MR. WATERSTREET:** Your Honor, as a clerical  
7 matter, I assume I'm going finish, the defendant is going  
8 to speak. Is there going to be any rebuttal for either  
9 parties after the defendant speaks?

10          **THE COURT:** I'm here if it take until noon,  
11 but then food calls. So I don't know at that point, but  
12 yeah, I think you can present as much as you like.

13          **MR. WATERSTREET:** Thank you very much, your  
14 Honor. And because we stopped about two weeks ago, I want  
15 to make sure the Court recalls where I was at at the time  
16 I sought the Court to sentence the defendant to at least  
17 96 months because of his threat to the public, and I think  
18 I believe I pointed out to the Court that the courts are  
19 encouraged to vary upward when the guideline range does  
20 not adequately represent the conduct of the defendant, and  
21 I think I supported that with some case law that suggested  
22 that the defendant is the person to be sentenced, not just  
23 the crime to which he pleads guilty to.

24          And I outlined the four goals under 3553, which is  
25 protection of the public, deterrence, reflect the

1       seriousness of the offense, and also to impose any  
2       educational or other training that's required in order for  
3       the defendant to be able to reintegrate into society, and  
4       I focused on the two main ones in which the courts have  
5       been consistent.

6               What I am talking about is protection of the  
7       public and deterrence, and I pointed out to the Court why  
8       the defendant himself is unable to, by relying on his  
9       claim to the Court, that he is no longer a danger to the  
10      community. We know through his own actions that he lacks  
11      the self-control, and I gave the Court examples of the  
12      phone he used, and how he used that phone, and then got a  
13      new phone and started downloading all of this -- these  
14      documents, and I believe I presented to the Court as part  
15      of a detention hearing, a sealed packet of the type of  
16      items that he was downloading. And the same thing, I gave  
17      an example of him using firearms and his aggression and  
18      his assaultive behavior.

19             Then I believe I turned -- and this is where I  
20      was -- that we stopped the proceedings -- was when I  
21      turned to the fact that we really cannot rely upon his  
22      family or his father to protect the public and to deter  
23      the defendant, because obviously he was in their care, and  
24      they were fully aware of many of his plans, and they did  
25      nothing to stop him, to deter him, and I understand, and I

1 believe I pointed this out that a family is put in a very  
2 awkward position at that time. A loved one of theirs is  
3 professed their desire to engage in some horrific  
4 activity, and there is the dilemma, do I go to law  
5 enforcement and tell about my love one and get them in  
6 trouble, or do I keep silent, and it's very clear what  
7 they decided to do. They decided to remain silent.

8 And so we cannot reply upon them, and I've  
9 provided the Court some examples of even going beyond  
10 that, for example, the father trying to provide a rosy  
11 picture of the defendant's actions saying he's a gentle  
12 individual, and he's never had any problems in school when  
13 the Pre-Sentence Report says otherwise, and statements the  
14 defendant made to his own doctors stated otherwise, and I  
15 used that as Government Exhibit Number 1. That was Page 4  
16 of Dr. Danuloff's letter to this Court dated March 29,  
17 2016.

18 Now I believe that I went through and started  
19 marking exhibits, and I think I did a very horrible job of  
20 making sure that the right numbers were correctly marked  
21 on the exhibits, and I want to apologize to your court  
22 reporter because I made his life a little bit more  
23 difficult.

24 So what I would like to do is make it very clear  
25 that one of the exhibits that I handed up was an excerpt

1 of a conversation that he had on January 28, 2016 with the  
2 undercover, in which he outlined the fact that his father  
3 knew full well that he wanted to engage in this martyrdom  
4 operation, and that he -- that the defendant supported  
5 ISIS, which he referred to as dawlah, and that he wanted  
6 to do a martyrdom operation, and I have the audio clip of  
7 that, and I want to mark that and the transcript as  
8 Exhibit Number 2. I believe I have that.

9 **MR. SHANKER:** Your Honor, I would just point  
10 out that the date on this, according to Mr. Waterstreet's  
11 exhibit, is January 18th, not January 28th.

12 **MR. WATERSTREET:** I'm sorry. It is the 18th,  
13 your Honor.

14 **THE COURT:** Okay. Thank you.

15 **MR. WATERSTREET:** Thank you very much. I  
16 appreciate that.

17 And I've already handed that up to the Court, but  
18 I to make sure we don't awry again on the exhibit  
19 numbering, and as well as the audio portion, and if the  
20 Court wishes, I can play that audio clip. We have it  
21 queued up ready to go, but it says exactly what it says  
22 here.

23 The defendant said, even my dad, he knows that I  
24 support dawlah, the state, referring to ISIS. You know,  
25 he tells me everyday, you know, be careful. Watch your

1 postings. Be careful who you talk to. You know, I told  
2 him numerous times that I wanted to make jihad. I do -- I  
3 want to do an istishhadi, a martyrdom suicide operation.  
4 I told my dad that. He doesn't support it, of course, but  
5 he tells me all the time -- and it's unintelligible. I  
6 have to listen to him first.

7 So we know that his family was aware of this, and  
8 then I moved another exhibit, which was Government Exhibit  
9 Number 3, which was showing that the family was well aware  
10 of this going back to 2014 when there was a text message  
11 on the defendant's old phone warning him that people are  
12 watching you, political views. Watch what you say when  
13 you use -- when you did texting and go on the internet.

14 **MR. SHANKER:** Your Honor, I did previous  
15 object to this, and I object on a number of basis.

16 Number one, this is something that apparently has  
17 been retyped from some source that we don't know where it  
18 came from.

19 One of the things that's been interesting in this  
20 case is that there was no forensic evaluation of the  
21 phones. So we don't have the detail information where  
22 each message came from, and this is just -- I don't know  
23 what this is. I don't know who's speaking here, who wrote  
24 these text messages, and I object to it.

25 There's no foundation for it on a number of



1 different levels, and that is my objection to it.

2 **THE COURT:** Okay. Mr. Waterstreet?

3 **MR. WATERSTREET:** Your Honor, those were  
4 provided as part of an analysis. There was a phone  
5 analysis, and those were Government Exhibits -- from pages  
6 on discovery of 790 to 799, and those are, in fact, a  
7 forensic analysis of the phone, and that's how we ended up  
8 getting these, and this is the ongoing conversation, the  
9 back and forth between an individual and the defendant.

10 **MR. SHANKER:** Your Honor, I would just point  
11 out that first of all, providing something in discovery  
12 from a phone does not -- is not equivalent of forensic  
13 evaluation. They dumped a number of things from phones  
14 that had been seized as part of discovery. That's not the  
15 same thing as a forensic evaluation where you can actually  
16 trace where the message came from. It's not the same  
17 thing as getting phone records that trace who sent the  
18 message and from what region and what time.

19 **THE COURT:** Let me interrupt for just a  
20 minute. So most of these are sent from a telephone number  
21 that is identified here. Is it your position that number  
22 is not tied to your client?

23 **MR. SHANKER:** I don't know if it is, but the  
24 one thing that I also know is this is something that was  
25 retyped.

1                   **MR. WATERSTREET:** I'm showing him the pages  
2 of the forensic analysis that was shown and was sent to  
3 the defendant's phone, and back and forth --

4                   **THE COURT:** Did you say sent to or from?

5                   **MR. WATERSTREET:** To. The to and from the  
6 defendant's phone. The to part is, do not use the  
7 internet for any political views. Everyone is watching.  
8 Then sent from his phone, he's claiming it's just  
9 research.

10                  **THE COURT:** This is in the same call?

11                  **MR. WATERSTREET:** These are back and forth.  
12 Time period is 7:50 p.m., 7:50 p.m., 7:51 p.m., 7:51 p.m.

13                  **THE COURT:** Are these text messages?

14                  **MR. WATERSTREET:** These are text messages  
15 back and forth.

16                  **THE COURT:** I see. So --

17                  **MR. SHANKER:** Just one moment. This doesn't  
18 make sense to me because the to and the from on this sheet  
19 that he is showing me are from the same number.

20                  **MR. WATERSTREET:** One is sent to, and one is  
21 sent from. It sent to his phone, and then he sends it  
22 from his phone.

23                  **MR. SHANKER:** Nowhere does it say who sends  
24 the messages.

25                  **MR. WATERSTREET:** That's correct. It does

1 not.

2 So obviously, two years ago somebody was very  
3 concerned about him keeping his eyes open and not making  
4 stupid decisions by putting his political views online.

5 Further proof that the family knew about his  
6 activities and did not forewarn to protect the public, was  
7 recovered from his new phone. There is a forensic  
8 analysis from that as well, which was an exhibit that we  
9 attached from Government Exhibit 88, which is Exhibit C,  
10 which I will mark as Exhibit Number 4, which is the ISIS  
11 flag the defendant sent out on October 22nd, 2015.

12 Now the timing of this rather important because  
13 this is right around the time that he just went and  
14 practiced shooting with the AK-47, and indicated that he  
15 was a follower of ISIS by also posting a photograph of  
16 himself, posing with the AK-47, and making the ISIS sign  
17 with his finger.

18 Then on October 25, 2015, which is again shortly  
19 after his arrest by Detroit Police Department, he sent a  
20 text photo to his brother Adam, which is Exhibit Number  
21 5 -- and this is the one that I moved to have sealed, and  
22 we have whited out Adam's cell phone number -- but this is  
23 a picture that he sent to his brother on October 25, 2015,  
24 which is again, now about a week and half after he  
25 practiced shooting with that AK-47, and there are two

1 pictures attached to this exhibit, one is the actual email  
2 as it appears -- I mean, the text message as it appears  
3 with the image to his brother, as well as the image itself  
4 that was found elsewhere stored on his cell phone, and  
5 it's a very graphic photograph of a person cutting  
6 somebody's head off, and this was -- the defendant felt  
7 this was important enough to share with his brother.

8 Another example was a text message that he sent to  
9 his brother, which was an exhibit again placed on -- in  
10 filing our Number 88. It was Exhibit E, but I'll mark for  
11 this matter as Exhibit Number 6, and this is a message  
12 dated December 12, 2015. Again, this is before he began  
13 speaking with the undercover employee, which happened a  
14 few days later, in which the defendant says, this would be  
15 a perfect time to do an istishhadi operation, which is a  
16 martyrdom operation.

17 So the brother was sent a photograph of the ISIS  
18 flag. He's been shown and sent a graphic photo of  
19 somebody being beheaded, and then being told that his  
20 brother wants to do a martyrdom operation. Yet, did not  
21 provide any information to the authorities. So we cannot  
22 rely upon the family to warn and protect and stop and  
23 deter the defendant.

24 And we know since the defendant can't control  
25 himself, the family is unable or unwilling to protect the

1 public, your Honor I submit to the Court it would be  
2 unfair to place that burden on the Probation Department.  
3 They are not trained to equip -- or equip to deal with  
4 ISIS inspired cases. It really comes down to this Court  
5 to step in and protect the public and deter the defendant,  
6 because we know even when confronted by the FBI, the  
7 father refused to talk to the FBI about his son. So we  
8 know the only person that is left is this Court.

9 Now if I may, I would like just spend a few  
10 minutes responding to some of statements that were made  
11 during defense counsel's colloquy to the Court. The  
12 reason why, there were some things that were said that  
13 will perhaps leave a false impression in the Court's mind  
14 of how the timing of events took place, and by making  
15 reference to a statement that the undercover employee made  
16 at the -- towards the very end of their discussions. It  
17 made it appear as if the defendant had no interest  
18 whatsoever of being involved in this type of activity;  
19 that it had been suggested on more than one occasion that  
20 he was somehow entrapped into doing this. We know his  
21 past conduct, and what he has put online, and what he has  
22 said to his family and his brother belie that.

23 But even if we look at the conversations back and  
24 forth themselves, it's clear that that's just not the  
25 situation. This is something that was driven solely by

1 the defendant throughout this communication, and in order  
2 to move quickly through this, I will paraphrase a lot of  
3 this.

4 It wasn't until mid-December that the undercover  
5 employee and the defendant began talking to each other,  
6 and they were talking back and forth to each other from  
7 about December 15th all the way up to about February 3rd,  
8 and during that conversation, the first part of the  
9 conversation, I would say from early December until --  
10 until December 23rd, it was just general engaging  
11 conversation, beginning to build a little trust with each  
12 other, and at that point the parties began to reveal a  
13 little bit more about their thoughts and what their  
14 concerns weren't.

15 On December 23rd, they moved to an encrypted  
16 method of communicating, which means up to this point it  
17 was on Twitter, which depending upon the settings that you  
18 place on Twitter, anybody could have read these  
19 communication.

20 But it wasn't until December 23rd that they moved  
21 to this encrypted method by which they could share their  
22 thoughts openly to each other, but not openly to the  
23 world; that we really begin to see a different side of the  
24 defendant.

25 It was right on December 24th he began to reveal

1 his anguishes about how he had a physical fight with his  
2 cousin, and how so upset he was that he had to work 90  
3 hours a week, and that nobody cares about him, and he even  
4 mentioned on the 24th that he want to do a martyrdom  
5 operation.

6 Then on the 26th, the defendant starts talking  
7 about marriage, and the undercover makes it clear from the  
8 very beginning that she has no interest in marriage or  
9 children. He discusses that he wants to have a marriage  
10 and a family, and the undercover says, if that's what you  
11 want, I will be happy for you, brother, Akeem. May Allah  
12 grant you a good wife and child, and I respect your desire  
13 to start a family, but I don't want to marry. Don't  
14 worry. You'll meet somebody.

15 So it is clear from the very beginning, this is  
16 not anything that the undercover is trying to entrap him  
17 into, luring him into a love interest. It is very clear  
18 from the very beginning, the undercover has no interest in  
19 marrying the defendant.

20 Then he says, don't you want to have children,  
21 watch them grow up, and the undercover says, honestly, no.

22 Beginning in January without any encouragement,  
23 without any statement of the undercover wanting to engage  
24 in any violence, this is when the defendant reveals that  
25 his father took the gun and outlines his plan to slaughter

1 the innocence at a church, and the undercover tries to get  
2 him to rethink his plan, and all through this process, if  
3 the Court were to read through the entire communications  
4 between the two --

5 **MR. SHANKER:** Excuse me. What date are we  
6 talking about here? I mean, January 8th is when that  
7 conversation about church takes place.

8 **MR. WATERSTREET:** Right.

9 **MR. SHANKER:** Okay. I just want to make sure  
10 that the date is on the record, because we went from the  
11 23rd and 24th to January --

12 **MR. WATERSTREET:** Well, I'm trying to move  
13 quickly through this counsel.

14 **MR. SHANKER:** Very good.

15 **MR. WATERSTREET:** If the Court wishes, I can  
16 go date by date, but I don't think we would gain much, and  
17 I think I've maybe gained the ire of the Court by taking  
18 so long.

19 On January 8th, the undercover asked him to  
20 rethink his plan, and what ends up happening, your Honor,  
21 it is very clear that as each time the defendant brings up  
22 these horrible ideas that he has in his plans, the  
23 undercover does her best to try to redirect him, suggest  
24 otherwise, defuse the situation and prevent him from doing  
25 this, and it happens over and over again.



1           The undercover suggests that maybe he should  
2     rethink this whole idea of the church, and suggest that,  
3     you know, these women and children that you want to go  
4     kill, perhaps one of these children will grow up and be a  
5     Muslim, and you're going to end up killing a potential  
6     Muslim and, he says, no, no. I can't say what this person  
7     is going to be in the future. So I must do what I have to  
8     do now.

9           And then the undercover says, well, aren't you  
10    afraid of death? I'm afraid to die. I don't want to be  
11    part of this, and then he chastised her. If you're a true  
12    believer, we cry for death, and she says -- tells him, I  
13    don't know how to shoot anything, and he says, it takes  
14    practice, and we know it takes practice because we saw  
15    examples of him practicing with that weapon.

16          Mid-January of -- January 10th, he becomes upset  
17    regarding his pending state offense. He doesn't want to  
18    go to jail for carrying a gun. He says, I want to kill  
19    someone so I go to jail for a good reason, and she pleads  
20    him to calm down. Please, calm down. It's not healthy.  
21    Then he responds, I'd rather kill myself than feel like  
22    this, and the undercover says, please. Don't say that.  
23    It's haram or a sin or to kill yourself.

24          Then he talks about his anger problems, about how  
25    he wants to hurt people, stab them, shoot them, skin them

1 like sheep, and the undercover says, you know, it's really  
2 good Khalil that you're getting this out and admitting  
3 that you need help. Certainly, not encouraging him to  
4 engage in any of this.

5 Then the undercover asks him, is this anger? Is  
6 this anger or is this jihad? He said both. There is no  
7 jihad without anger.

8 And then this perhaps is rather troubling  
9 conversation. The undercover mentioned that a relative of  
10 hers had some children, and this is a rather frightening  
11 conversation, statements the defendant made concerning  
12 that. This was on January 17th.

13 The defendant says, I love babies, and the  
14 undercover says, yes, indeed. They bring hope into life,  
15 a nice uplifting thought, and the defendant's first  
16 response is when I have children, I'll make him a  
17 mujahideen, which is basically an ISIS jihadist. I will  
18 teach him the dean. I will train him physically and  
19 mentally. She says, wow. How will you train him? He  
20 will be a baby. I will start to train him to hold a toy  
21 gun. I will make sure he doesn't watch cartoons, just  
22 dawlah videos. I will dress him in mujahideen clothing.  
23 Why would you do that when he is has to live with the  
24 kuffar? Khalil, it will be a hard life for him. You're  
25 right, but you always have to remind him, we don't belong

1 here. When they are young, their mind is like a sponge.  
2 We have to teach them early.

3 And what he wants to do is show these dawlah  
4 videos, your Honor, and I referred to them before, and  
5 they are part of Government Exhibit B as part of our  
6 sentencing memo. These are the videos that he delighted  
7 in, and he wanted somebody to send to him. And the video  
8 that he asked them to be sent to him was "Kill Them  
9 Wherever You Find Them"; a video which he agreed he never  
10 smiled so much in his life when he was watching this  
11 video; the same type of videos that he suggests that his  
12 son will be shown instead of cartoons; a video of  
13 executing captured people; a soldier with his hands bound  
14 is begging for his life, and is executed by being shot in  
15 the head.

16 The video also has people lying -- civilians --  
17 people dressed in civilian clothes and with their arms  
18 tied behind their back, lying down in a ditch and someone  
19 is going by and shooting them in the head. This is the  
20 video that he wants to show his children. He says, this  
21 is going to be my fifth time watching it. The video was  
22 probably the best one yet. Not a dull moment.

23 Your Honor, frankly, that second scene was as far  
24 as I could watch. As far as I could watch that particular  
25 video, but this is the video that he wants to show his

1 children.

2 Towards the end of January, he is still concern  
3 with the state case, and fears that an all white jury will  
4 convict him based on his name and looks, and he says, just  
5 want me to snap, and the undercover says, I'm here for you  
6 to let out your feelings. Don't blowup, and then she  
7 tries to calm him.

8 He talks about suicide. She tries to talk him out  
9 of it by saying it's a sin to commit suicide.

10 He later talks about how -- he explains how Satan  
11 talks to him. He tells him to hurt people. We'll have  
12 fun hurting people. He talks to me before I go to sleep.  
13 He tells me to burn them alive. Tie them up, cut out  
14 their tongues, that you're doing my work, and she tries --  
15 she doesn't try to encourage him. She tries to discourage  
16 him by giving him a prayer that he should say that would  
17 make Satan go away.

18 Then he is upset that his case is being delayed  
19 because one of the police officers who arrested him on his  
20 firearm case had a heart attack was in the hospital, and  
21 the defendant says, if I find out what hospital he is in,  
22 I'm going to go there and kill him, and the undercover  
23 points out that there's cameras everywhere, Khalil.  
24 You'll never get away with it, and he says, I know I won't  
25 get away with it. It will be martyrdom operation.

1           And I don't think you can be any clearer about not  
2 encouraging the defendant to engage in anything than  
3 Government Exhibit Number 7.

4           On January 21th, but that means you will die too,  
5 Khalil. Death is no joke. You're life is ahead of you.  
6 Why not change toward being a good son and praying and  
7 working hard to be successful and reaching old age,  
8 instead of having these filthy kuffar, make you pay your  
9 life as a price for their Kufr, for their unbelieving?

10          So for counsel to suggest this was horrible that  
11 the undercover was somehow trying to encourage him, that  
12 every turn he makes mention of these horrible plans, the  
13 undercover is discouraging him.

14          And his response is, the kuffar have won. They  
15 have let me become this way. That was his explanation of  
16 why he wasn't going to just pray hard, work hard and grow  
17 old.

18          He talks about traveling to Libya. He says it is  
19 easier to travel. There is mujahideen there, and he says,  
20 I'm not going to stay here long. I'll do a istishhadi  
21 operation. I'll get my car and blow myself up. It was  
22 this part that finally the undercover says, I'll go to  
23 Libya with you.

24          Now what is going on at the same time is the  
25 defendant is, through Twitter, the FBI is able to see that

1 he is speaking to somebody in Libya. Who? Do not know  
2 whom, and he's also talking to this other woman on  
3 Twitter. Who? The FBI does not know whom, and the  
4 concern that the FBI has, and they make a tactical  
5 decision that if he makes these plans to go to Libya, we  
6 won't know about it. If he decides to start talking to  
7 this other woman and make plans with a woman who does want  
8 to be married, does want to have children, that perhaps he  
9 will get together with her, and he will engage in his  
10 martyrdom operation that he has already outlined, and the  
11 FBI will not be forewarn. So it is at this point in time  
12 that the FBI decides to make a tactical decision to say, I  
13 will join you.

14 And it is at this point that the undercover says,  
15 well, jihad is my dream too, and based upon the  
16 conversations, it is very clear the defendant understands  
17 that the undercover really doesn't personally believe to  
18 engage in jihad, because shortly after that the undercover  
19 talks about the fact that she was contacted by somebody  
20 in -- from the Middle East, and at that point the  
21 defendant concerned for her, now that he knows that she  
22 may now travel with him, says, be careful. They maybe a  
23 spy. Don't talk to them. It is very easy to be caught up  
24 and arrested, and then starts making plans of how he --  
25 how they need to be careful when they go to the airport,

1 that he has to shave his beard, and that she has to wear a  
2 scarf rather than a hijab because we can get stop at the  
3 border. But then he finally realizes, you know what? He  
4 comes to the realization that he can't leave right now  
5 because he has a pending state case, and he makes that  
6 clear. He says we just can't leave right now, and if I  
7 get a felony conviction, I will be on the no fly list, and  
8 then he becomes depressed, and this what leads to the  
9 conversation when we find out why he is depressed.

10 He is depressed because he tells the undercover in  
11 a telephone conversation that he fears that law  
12 enforcement will find the videos that he had on his first  
13 cell phone, and he makes clear that there's a difference  
14 between just watching videos and downloading them on your  
15 phone because they know that you're part of that group.

16 So, your Honor, it is very clear that if you  
17 follow the timeline, there's been no entrapment. These  
18 are all of the defendant's own ideas, his own plans, his  
19 own intentions, and to say otherwise would be a  
20 misstatement of the chronological order of these events.

21 During the defense counsel's statement, there was  
22 a statement that he said that the doctors have found that  
23 the defendant is not a danger, and I think perhaps defense  
24 counsel may have misread this part of Dr. Tillbrook's  
25 report because this Court has already concluded that the

1 other doctor lacks the training and background that render  
2 any opinion concerning the defendant's dangerousness.

3 That only leaves Dr. Tillbrook's report, and the  
4 report doesn't say that the defendant is not a danger to  
5 the community. It says it's based upon he is not a danger  
6 to himself or the community based upon mental disease or  
7 defect, and that's a big difference between the two. It's  
8 because the way the law is written, and Dr. Tillbrook was  
9 trying to be very thorough in his report, and he did write  
10 a very thorough report.

11 The interplay of 18 U.S.C. 4241 and 4246 is if the  
12 defendant is sent away for a competency evaluation to the  
13 custody of the attorney general, and in the process of  
14 doing that custodial review if the doctor finds that  
15 because of a mental disease or defect the defendant is a  
16 danger to the community or danger to property -- or in the  
17 words of the statute -- presently suffering from any  
18 mental disease or defect as a result of which his release  
19 would create a substantial risk of bodily injury to  
20 another person or serious property damage to another, the  
21 attorney general shall sent notice to this Court so the  
22 Court can then conduct a hearing to determine whether  
23 civil commitment is necessary to ensure the safety of the  
24 public.

25 That is what Dr. Tillbrook's report is because on



1 Page 11 of the 18 page report it says -- this is his  
2 statement concerning about dangerousness -- given that  
3 Mr. Abu-Rayyan is not presently -- is not presenting with  
4 acute psychiatric symptoms, and is not a substantial risk  
5 of causing bodily harm to another or serious property  
6 damage to another, due to mental illness inpatient mental  
7 health is not indicated at this time. That is what he was  
8 talking about when he said he is not a danger.

9 Counsel also suggests there was no evidence that  
10 he really intended to follow through with any of these  
11 things, and he says -- even the defendant's own words are  
12 evidence. The defendant's text messages to his brother  
13 are evidence. His statements to his brother are evidence.  
14 The items that were found in the defendant's home are  
15 evidence. The photos that he posted on his Twitter  
16 account are evidence. Practicing with a gun he intended  
17 to use in attack is evidence; in other words, other than  
18 the evidence, there is no evidence.

19 The defense suggests the proof of lack of intent  
20 is that since he didn't buy tickets to travel or didn't  
21 have explosives or mass firearms, and he didn't train, he  
22 really was not going to really follow through with this,  
23 but frankly, your Honor, that argument misses the point,  
24 because recent history has showed us that that's not  
25 what's happening in the United States anymore.

1 People are not traveling from the United States  
2 over to fight. Not everybody is using explosives. Not  
3 everyone is amassing a stock pile of weapons. We need to  
4 look no any further than Orlando, Chattanooga, even  
5 Columbus, Ohio at Ohio State University. Even the  
6 defendant acknowledged that he will commit my jihad here  
7 if I cannot go to the Middle East.

8 He was trying to get guns. They were seized. He  
9 tried to buy them again. He was practicing with them. He  
10 took a photo of them and posted them on his Twitter  
11 account.

12 He acknowledged for jihad on January 9th. He can  
13 use a knife. He can use a car. All he has to do is pick  
14 a target, have a weapon, and we have found, your Honor,  
15 there is no special triggering event that causes a person  
16 to pursue their plan to murder.

17 Counsel referenced three cases in his statements  
18 to the Court. One was the Lanton case, the Gregerson case  
19 and the Shehadeh case.

20 As to Lanton and Gregerson, people talking about  
21 killing police officers and people talking about buying --  
22 purchasing hand grenades are certainly very serious  
23 matters, but I think counsel improperly attempts to  
24 compare and contrast plea offers made to a defendant with  
25 the government's sentencing recommendation to this Court,

1 because I believe counsel, as I say, is attempting to  
2 equate apples with oranges.

3 Now I'm not the prosecutor on the Lanton case or  
4 the Gregerson case. From reading the documents that were  
5 presented, I don't think defense counsel is, and this  
6 Court certainly is not the court of review on either of  
7 those cases, and so frankly, your Honor, to try to do a  
8 factual analysis, none of us know enough about those facts  
9 to do any type of distinction.

10 From my experience when it comes to plea offers  
11 versus sentencing recommendations after a defendant pleads  
12 guilty to -- like the defendant has here with no plead  
13 agreement, there's a lot of factors -- a multitude of  
14 factors that are non-3553 factors that go into what plea  
15 offer to make, some that may or may not have existed in  
16 the Lanton or Gregerson case. Such as:

17 Was there a supression of critical evidence?  
18 That didn't occur here.

19 Was there unavailability of witnesses? We don't  
20 have any proof of that.

21 Did the defendant agree to give up something in  
22 exchange for something? Sure, such as an appeal waiver or  
23 agreed to be deported.

24 There was some new case law that may have  
25 impacted the prosecution. That does not appear here.

1           Was there exculpatory evidence or perhaps even  
2 cooperation of the defendant, which may cause the  
3 government to make a plea offer that it does?

4           And to clear up something else that counsel said  
5 concerning the Gregerson matter, at one point counsel  
6 misspoke, and I believe it was just that, a misstatement.  
7 He suggested the government agreed to allow the defendant  
8 to seek a downward departure. The defendant in the  
9 Gregerson has no right to seek a downward departure. The  
10 only issue is the upward departure.

11           And speaking of the Gregerson matter, in his  
12 closing, defense counsel asked a rhetorical question,  
13 clearly accusing the U.S. Attorney's Office of engaging in  
14 unconstitutional conduct, and when he said, I certainly  
15 hope that the offer on the Gregerson matter is not  
16 impacted by the fact that he is a Caucasian versus the  
17 fact that the defendant is a person of Middle Eastern  
18 descent.

19           Now I'm sure the Court is well aware that cases  
20 involving weighting matters such as the Gregerson and  
21 Abu-Rayyan case are personally viewed by the U.S.  
22 Attorney, and I'm compelled to defend the honor and the  
23 integrity of Ms. McQuade for whom I work, and for whom I  
24 advocate on her behalf from defense counsel's baseless  
25 allegation take she is seeking a eight year sentence in

1 this particular case, based solely upon the defendant's  
2 religion, ethnicity and or race.

3 He has offered no facts to support this, and  
4 having failed to present any factual support, I can only  
5 conclude, knowing the media is here right now, and has  
6 been in the past, that the attacks on Ms. McQuade are  
7 simply trying to inflame a certain segment of this  
8 community, as I know this Court will never be moved by  
9 such baseless allegations.

10 The last thing that I do want to talk about  
11 concerning the cases that were brought up is the Shehadeh  
12 case, and because defense didn't go deeply into the facts,  
13 I was unable to recognize the case based solely on the  
14 title, and that's United States versus Abdel Shehadeh,  
15 2013 WL 6049001, out of the Eastern District of New York,  
16 and it's a case that's similar to this case.

17 A defendant who posted pro-terrorist propaganda,  
18 who expressed his desire to conduct a violent jihad, and  
19 who was stopped by local and federal authorities before he  
20 could follow through with his plan. Rather than going and  
21 planning to shoot up a church, it was Mr. Shehadeh's plan  
22 to join the U.S. Army, and contemplating turning his  
23 weapon on his potential future military comrades.

24 Just like this case, he was not charged with  
25 materials -- attempted materials support of terrorism, but

1 charged with making a false statement to the government.  
2 The defendant was also charged -- this defendant  
3 Mr. Abu-Rayyan was charged with making a false statement  
4 to the government when he filled out that false document  
5 for the firearm.

6 The charges in Shehadeh was making false  
7 statements, 1001 charges, making false statements to law  
8 enforcement. Two of the charges -- he was charged with  
9 three charges, two of them involved terrorism, making a  
10 false statement relating to terrorism, which would have to  
11 deal with his planning to shoot up and kill U.S. military  
12 personnel on behalf of ISIS, and one 1001 charge, which  
13 was not involving terrorism.

14 The statutory maximum for the 1001 is eight  
15 years per count, making a false statement not involving  
16 terrorism is a five year statutory maximum. There, the  
17 government sought to have the terrorism enhancement under  
18 4A1.3 to be enforced and therefore, the defendant's  
19 guidelines would be 210 to 252 months or seek a variance.

20 Now we did not seek in our sentencing memorandum  
21 for a sentencing enhancement under 4A1.3, but used it to  
22 give the Court some idea of what it could do in going  
23 upwards and what factors it could look to in fashioning a  
24 correct sentence in this case.

25 Counsel in this case has suggested when he read

1 a footnote from that case, that a variance was  
2 inappropriate in this instance because the defendant's  
3 actions of re-tweeting jihad propaganda was legal and  
4 protected by the First Amendment.

5 While in the Shehadeh case, the Court found that  
6 the sentencing enhancement under 4A1.3 was inappropriate,  
7 it clearly stated that he should be given an upward  
8 variance.

9 As the Court noted because of the diligence of  
10 federal and local officers, the defendant could not commit  
11 his contemplated act, just like in this matter, and to  
12 quote the court, it says, the stumble bum nature of  
13 Shehadeh's conduct may have saved him from enhancement for  
14 promoting the commission of such crimes under 4A1.3. It  
15 does not however diminish his serious, malevolent intent,  
16 nor hold him harmless from considerations of what might  
17 have been in determining the sentence imposed based upon  
18 the totality of the circumstances, and the floodlight of  
19 Section 3553.

20 The court went onto state, that good  
21 investigative work and luck may have frustrated the  
22 defendant's plans, and preventing the imposition of a  
23 sentencing enhancement does not bar consideration by the  
24 court of the serious and heinous objects of the  
25 defendant's offenses.

1           It's stated, while the defendant Shehadeh  
2 displayed a significant level of immaturity, there is no  
3 question that his conduct was extremely serious, and  
4 warrants a substantial period of incarceration, and citing  
5 the factors of deterrence and protection of the community,  
6 the court varied upward, sentenced him to 13 years, eight  
7 years above his guideline range, running his two terrorism  
8 cases the statutory maximum, each running them  
9 concurrently, and adding a consecutive five year sentence  
10 on the other false statement for a total of 13 years.

11           Your Honor, Mr. Abu-Rayyan cannot be released,  
12 at least not in the near future without seriously  
13 endangering the public. Outside of prison, no one can  
14 monitor him around the clock. We know his family is not  
15 willing to forewarn authorities to protect the public.

16           Counseling will not work. Counseling -- when he  
17 said that he dreamed of getting a gun and bringing it to  
18 shoot everybody in church -- counseling has not worked;  
19 that when he was clear that he couldn't buy a gun, he  
20 tried to go out and buy another gun. Practicing with a  
21 gun, wanting to shoot up a church, knowing and completely  
22 preventing him from acquiring a AK-47 and other dangerous  
23 weapons, and no one can stop him from hatching new ISIS  
24 inspired ISIS terrorism plan. Thus, no one can guaranty  
25 the public's harm from him.



1           Now I know the defendant will address the Court,  
2           and I just want to talk about one more thing.

3           Counsel has made significant points on the  
4           maturity that the defendant has gained over the 13 months  
5           that he has been in custody, and citing solely the letters  
6           that he -- self-serving letters that he has written to  
7           family members to show that maturation process, and how  
8           having been arrested in February that suddenly he matured,  
9           and today he understands that he should be humbled by what  
10          he did, and what he said was wrong, and what he planned  
11          was wrong, and that he didn't intend to break the law,  
12          but, your Honor, I submit that is a false argument, and I  
13          will tell you why.

14          We've heard that same argument in the past. One  
15          month, just one month after he was arrested, he made a  
16          sentencing colloquy, a sentencing allocution to Judge  
17          Strong in the state case, where he said, I apologize. I'm  
18          a humbled man. I embarrassed my family. I didn't intend  
19          to break the law. This wasn't after a 13 month period of  
20          maturation. This was one month later in which he was  
21          making self-serving statements to the court to try to get  
22          him a break.

23          But the question is, if he claims it was only to  
24          impress a woman, why is he sending beheading photos to his  
25          brother? Why is he texting his brother this is a good day

1 to do a martyrdom operation? If he claims all I was  
2 trying to do is get attention from somebody, how do you  
3 get attention from somebody by downloading gruesome  
4 photos, the same photos that I presented before to the  
5 Court? How do you get attention by putting a screen saver  
6 of a ISIS fighter holding a severed woman's head? That is  
7 for him and him alone. There is no attention getting from  
8 doing that act.

9 As I said, defendant's conduct has proved that  
10 there is a compelling justification for the above  
11 guideline sentence of at least 96 months.

12 And in closing, I just want to make one more  
13 comment. I had an opportunity as a result of the extra  
14 two weeks to read over a little more closely some of the  
15 statements that were made, and there was one statement, to  
16 say it is shocking compared to all of the other shocking  
17 things, I don't know how much more shocking it could be,  
18 but this is what he said after explaining his plan to  
19 murder all the innocent people at this church, after the  
20 undercover suggested that perhaps he would be murdering  
21 young Muslims, and he said it would be a bloodbath, and  
22 why he picked the church, because they couldn't defend  
23 themselves. They wouldn't allow them to have guns there,  
24 and then he explained how his father took this gun away  
25 from him. This is the thing that he said, and it's --

1       ironically enough, it appears on the last page of  
2       Government Exhibit 107 -- I mean, Exhibit C of the  
3       government's sentencing memorandum, the last page. It is  
4       a very chilling statement, which I previously overlooked.

5               He says, maybe down the line I can try again.  
6       Maybe down the line, I can try again.

7               **THE COURT:** Before you step down, assuming  
8       the Court agrees an upward variance is called for, how do  
9       you arrive at 96 months?

10              **MR. WATERSTREET:** Well, your Honor, as the  
11       Shehadeh case, and also there was another case that I  
12       think -- it's the Lajqi case, which is 457 Fed App 246.  
13       It's a Fourth Circuit case which affirms an upward  
14       variance based upon just his claim, and that was a case in  
15       which it was -- the guidelines were zero to six months,  
16       and they approved -- affirmed a 60 month above a guideline  
17       range.

18              The defendant's guideline range is -- we're asking  
19       slightly above that 60 month additional guideline range,  
20       and also if we look at the Shehadeh case for some  
21       reference, a case like I said is strikingly similar, that  
22       was a case in which the court went to the statutory  
23       maximum on both counts. I'm not asking for the statutory  
24       maximum, your Honor. The statutory maximum in this case  
25       is 20 years. I'm asking just shy of the statutory maximum

1 of one of those charges.

2 **THE COURT:** Twenty not 10?

3 **MR. WATERSTREET:** It's 10 years plus 10  
4 years. It's the 10 years for making the false statement  
5 in the document, and 10 years for possessing the firearm  
6 as a prohibitive person. So the statutory maximum is 20  
7 years. Ms. McQuade did not ask for 20 years. She  
8 suggested eight years at least.

9 Any other questions, your Honor?

10 **THE COURT:** Nope.

11 **MR. WATERSTREET:** Thank you.

12 **THE COURT:** Let's take a couple of minutes.

13  
14 (Recess taken.)

15  
16 (Proceedings resumed.)

17  
18 **THE COURT:** Mr. Shanker?

19 **MR. SHANKER:** Thank you, your Honor.

20 Your Honor, the first thing that I want to point  
21 out is that we've heard a number of basically Khalil's  
22 worst statements that he made to the undercover Jannah,  
23 the second undercover, and I think it's interesting that  
24 Mr. Waterstreet is -- the government is basically saying,  
25 well, these are all true. These are true statements, true

1 intent, and once again, the evidence -- other evidence in  
2 this case all indicates to the contrary.

3 We have Dr. Tillbrook, government's own expert.  
4 He found that Khalil -- that these were false statements.  
5 He found that Khalil was credible in what -- in his  
6 explanation of why he was making these statements to  
7 Jannah. He said that he did not -- he found that he did  
8 not have the intent to harm anybody, and he talked about  
9 just how uncomfortable Khalil was at that point in his  
10 life, and we have to put this into perspective.

11 You know, he was -- had been arrested for the  
12 first time in his life and charged. So he was facing  
13 that. He had just gone through, what for him, was the  
14 greatest love relationship of his life with the  
15 government's first undercover Ghadda, who suddenly  
16 disappeared when the family was getting ready to go down  
17 and visit the undercover family in Columbus, Ohio.

18 So there was no question that there was a lot of  
19 stress going on with Mr. Rayyan, and there's no doubt as  
20 all the experts in the case pointed out, he was suffering  
21 from depression, the substance abuse elements going on,  
22 but the major point here is he did not intend to hurt  
23 anybody. He was saying things that Jannah wanted to hear,  
24 and that's why I really right now want to correct the  
25 timeline that the government just gave about Jannah's --

1       you know, he basically says that she doesn't even talk  
2       about committing jihad until late January. That is  
3       absolutely inaccurate.

4               **THE COURT:** We have submitted transcripts in  
5       our prior motions from December. In December, Jannah  
6       tells Khalil that she is ready to commit jihad. She says  
7       why? She says my husband was killed by anti-ISIS forces  
8       in Syria, and then there's a very emotional moment --  
9       again, this is a month before the government is talking  
10      about. This is December 2015 where she says, I just had  
11      two family members killed by anti-ISIS forces in Iraq, and  
12      she's playing up the Sunni Shite divide, and -- and so  
13      she's committed to this from the very beginning.

14             And I think it's interesting, you know, I agree at  
15      the beginning of their conversations, she says I'm not  
16      interested in marriage. I agree with that. That's  
17      exactly why Khalil started shifting his statements, and  
18      you know what, Judge? We knows that these are horrible  
19      statements, and he takes responsibility for it. They were  
20      reckless. They were scary. They are terrible statements,  
21      but he didn't intend to commit any crime on anybody. He  
22      was trying to impress her. The only way that he was  
23      getting her attention is when he joined the conversation  
24      about her family deaths at the hands of anti-ISIS forces,  
25      and her devotion to being a jihadist.

1           And what's interesting as I pointed out, and the  
2 government just left it off, is that there are numerous  
3 times in December, January and February right before the  
4 arrest where Khalil says, when she tries to get it down to  
5 brass tacks and says, are you -- are you in? She says I  
6 have a connect name, Oum Maria in Syria, and I can make  
7 this happen. Are you in or are you out? He says that  
8 he's out.

9           When he is suicidal on February 1st, and she tries  
10 to say well, you know what? Committing suicide, that's  
11 not good. That's not in accord with Islam. You need to  
12 make it into an act of jihad, and we've submitted that  
13 recording. He says, I don't want to hurt anyone else.

14           **THE COURT:** When was that?

15           **MR. SHANKER:** That's February 1st. So Judge,  
16 the timeline as the transcript shows is very different,  
17 and I think that's very, very important here.

18           There was also a reference by Mr. Waterstreet to  
19 how -- well, you know, Dr. Tillbrook, all he was doing was  
20 determining whether -- all he was doing is determining the  
21 standard for civil commitment, and I think that's very  
22 interesting because civil commitment, the standard is  
23 whether he is a danger to himself or others on the  
24 outside. In a civil commitment standard, that's what  
25 we're looking at, whether somebody on the outside who is

1 out in the public, needs to be basically put in custody  
2 against their will for treatment because they are danger  
3 to themselves other others.

4 And the bottom line is, Dr. Tillbrook went far  
5 beyond just that finding. As I've stated, he found that  
6 Khalil did not intend to harm others, that he was a  
7 credible -- after hours and hours of conversations, after  
8 reviewing all the transcripts in the case, after reviewing  
9 the discovery in the case, all of these items for 24 hours  
10 a day observation with the staff for over a month -- he  
11 came to the conclusion that the best thing for Khalil  
12 would be community confinement -- or community treatment  
13 in a dual program where he could get mental health  
14 counseling and substance abuse treatment, and that's  
15 significant. I mean, that's the government's expert  
16 there.

17 So I think it is very important to keep that in  
18 mind when I'm talking about the evidence of terrorism in  
19 the case. We have his statements, but we have expert  
20 findings that oppose that.

21 We have the search warrant. I mean, it's not like  
22 they announced two weeks ahead of time, we will be at your  
23 house and your business and your car, and go through  
24 everything that you own. So start, you know, take care of  
25 the evidence. They showed up unexpectedly. They searched



1 everything. They took every computer, every electronic  
2 device, everything that this family owned, and they still  
3 have it, and they found nothing. Nothing to show a plan.  
4 Nothing to show that -- no guns, no knives, no ammunition.  
5 It was a completely false statement what he said, and we  
6 know that -- that he is under surveillance during this  
7 time. They are watching him the whole time, and there's  
8 no -- if they had the evidence, they could put a person up  
9 right now and say, we saw him walking around with his AK,  
10 but he didn't.

11 The other thing Judge, the government mentioned  
12 the findings of Judge Strong -- or mentioned that Khalil  
13 made that statement to Judge Strong. I'm not sure what  
14 the point is there, but I think it is important what Judge  
15 Strong found because Khalil pled guilty and was sentenced  
16 after the charges were out in this case. There was a big  
17 brouhaha around February 4, 2016.

18 February 16th is when he goes in and pleads in  
19 front of Judge Strong and gets sentenced, and Judge Strong  
20 found that in listening with his knowledge of the  
21 situation, listening to Khalil's statement of allocution,  
22 and looking at the evidence in the case -- and I just want  
23 to remind the Court, this is the same gun that's involved  
24 here -- he explicitly found that Khalil did not intend to  
25 commit any kind of terrorist act; that he truly wanted a

1 gun for self-defense purposes.

2 His statement was as follows: I believe you are  
3 remorseful, and I believe the circumstances for which the  
4 crime was committed. He has strong family ties and is  
5 working. It looks like he was trying to do the right  
6 thing, but he didn't do it the right way, but ignorance of  
7 the law is not an excuse.

8 Well, that's -- I mean, I agree with that, and I  
9 think the evidence that we now have supports that.

10 As I pointed out the last time, every time -- he  
11 only had a gun on three days during the entire  
12 investigation, and one was two days, October 7th and --  
13 5th through 7th of 2015, and that was the .22, and then  
14 the other day was November 15th of 2015, again, before he  
15 is charged at the state level where he goes and tries to  
16 buy a new gun, and that doesn't go through because the  
17 initial arrest is still pending, but there's no charge.

18 And then he takes a class at the behest of his  
19 parents who told him that he should follow the law. If he  
20 wants to get a CPL, he's got to take a class and pass it,  
21 and so he takes the class afterwards. For a matter of  
22 minutes, he and his cousin fire off these big rifles with  
23 a range officer present at the range, and that's it.  
24 That's the extent of his weapon possession in this case.

25 Your Honor, I also -- Mr. Waterstreet discussed

1 the Shehadeh case, and I think the Shehadeh case is  
2 actually very supportive of our position here.

3 In Shehadeh, first off, the government properly  
4 objected to the guidelines and requested an enhancement  
5 and variance, and they did that ahead of time, and if you  
6 look at that opinion, there's a whole procedural matter  
7 that happens before they even get to the sentencing  
8 hearing, and the judge walks in and gives them notice  
9 ahead of them that he considering a variance upwards. So  
10 unlike this case, I think everything was preserved there  
11 to start.

12 Secondly in that case, there was overwhelming  
13 evidence of terrorist intent, violent intent, and most of  
14 it wasn't even opposed by the defendant.

15 So, you know, there's no -- it's a completely  
16 different situation than what we have here where the  
17 evidence is weak, and there's experts opposing that  
18 evidence, and there's a search warrant that goes against  
19 any terrorist intent here. So I think that's very  
20 important when looking at Shehadeh.

21 But even more significant, your Honor, I think is  
22 the government is relying on a case in its memorandum, a  
23 Fourth Circuit case called U.S. versus Lajqi, and the  
24 government mentioned it when we last met, and mentioned it  
25 again today. That's a Fourth Circuit case, and I was

1       curious. What are facts of this?

2               The appellate case that was cited by the  
3       government is actually a summary unpublished opinion, and  
4       it has no real facts or explanation, but it does affirm  
5       the district court's upward variance to 60 months in that  
6       case.

7               So I went back, and I found that there is a  
8       transcript of the sentencing hearing and the district  
9       court's findings that really details the reasoning, and I  
10      want to put that on the record. It's 10-CR-00502,  
11      Document 40, May 23, 2011, and again, this is U.S. v  
12      Lajqi, L-a-j-q-i.

13              So let's compare the evidence in these cases.

14              In Lajqi, the defendant, along with an informant,  
15      devised a terrorist plot, agreed to participate in the  
16      plot, and most importantly, he never withdrew from the  
17      plot. So it's not like this case where Khalil is telling  
18      the undercover, I don't want to hurt anybody. No, that's  
19      not the case in Lajqi.

20              In Lajqi, unlike this one, he actually goes and  
21      spends hours casing buildings to bomb in downtown  
22      Washington D.C. in front of witnesses. So that's  
23      evidence. This is again, I'm going through the evidence  
24      that allows a variance of this sort.

25              Third, Lajqi admitted that he was a member of a

1 terrorist organization for years, the Kosovo Liberation  
2 Party, and he admitted over the years, he actively sought  
3 U.S. forces in Kosovo.

4 Fourth, in Lajqi, there were no expert witnesses  
5 who found that Lajqi didn't intend to commit acts of  
6 terrorism like this case.

7 Here, we have two experts, including the  
8 government's expert, and a state court judge who found  
9 that Khalil did not intend to hurt people; that he was not  
10 a substantial danger, and that he's amenable to community  
11 treatment for substance abuse and mental health  
12 counseling.

13 And finally, five, your Honor -- and this very  
14 important to the judge's finding that they met their  
15 burden of proof, this was crucial -- the FBI case agent in  
16 Lajqi submitted a sworn multiple page affidavit testifying  
17 to Lajqi's dangerousness, and why, and the facts in that  
18 affidavit were largely uncontested by the defendant.

19 So for all of these reasons, none of which are  
20 present in this case, the district court in Lajqi found  
21 that there was strong evidence that Lajqi intended to  
22 commit real acts of terrorism, and therefore, justified  
23 the variance to 60 months.

24 **THE COURT:** Aren't the threats that are  
25 claimed to be made by your client largely uncontested in

1 this case?

2 **MR. SHANKER:** No. They are absolutely  
3 contested. I mean, he is contesting that they were  
4 threats, that they are true threats. They are false  
5 statements, and that's the difference really.

6 I mean, he is saying, I didn't intend to hurt  
7 anybody. I made these stupid statements. I was talking  
8 to impress this undercover, this love interest, and he  
9 owns that, but he absolutely opposes that these are true  
10 threats, and there's evidence to support that.

11 **THE COURT:** Okay. I'm not sure I get the  
12 distinction. When he's talking about killing people in a  
13 church, you're argument is that he didn't mean it?

14 **MR. SHANKER:** Exactly.

15 **THE COURT:** But you're not really arguing  
16 that he didn't say --

17 **MR. SHANKER:** I admit he made -- yeah, he  
18 made the statement, and your Honor, he made the statement  
19 about the church and the statement about the police  
20 officer, and they were isolated statements. He doesn't  
21 mention it again. So he talks about jihad with her  
22 multiple times, but that's the only time that those come  
23 up.

24 But back to Lajqi, the other important thing there  
25 is that the court varied to 60 months in Lajqi because he

1 also found that due process concerns about notice and the  
2 sentencing tail wagging the charging dog were alleviated  
3 for the following reasons:

4 One, the -- first of all, the government preserved  
5 the request for an upward variance under Section 3553 at  
6 the time that the defendant entered his guilty plea, and  
7 again when the PSI came out, neither of which are present  
8 in this case.

9 Also in Lajqi, he was an illegal alien when he  
10 committed the offenses of conviction, and therefore, the  
11 court found that he had diminished due process rights when  
12 it came to be sentenced on uncharged conduct. Of course,  
13 Khalil is a U.S. citizen.

14 The court also found it significant that the  
15 confidential informant in that case had been disclosed to  
16 the defense during the discovery process alleviating  
17 credibility concerns. In this case, not only we don't  
18 have the identity of the confidential informant, the  
19 government refused to tell us whether there were other  
20 informants involved in the case, and, you know, we don't  
21 know who else contacted him.

22 But in sum, the basis for the upward variance  
23 based on uncharged conduct in Lajqi, is just not  
24 comparable from a procedural or a substantive level to  
25 Khalil's case for all of these aforementioned reasons.

1                   **THE COURT:** So that I'm clear, are you making  
2 a procedural challenge to the Court even considering an  
3 upward variance? Are you asking that you be given more  
4 time to prepare a response to that request, even though  
5 the government has been asking for this from the  
6 beginning, right?

7                   **MR. SHANKER:** Well, from the beginning since  
8 it filed its memorandum?

9                   **THE COURT:** Right, prior to the sentencing  
10 hearing that we last had.

11                   **MR. SHANKER:** Yes. So no, my procedural  
12 challenge is that first of all, that they've waived the  
13 various by not objecting to the Pre-Sentence Report. They  
14 have waived it.

15                   I think more importantly, they failed to meet the  
16 burden of proof to obtain the variance that it's  
17 requesting.

18                   I mean, we have -- I've tried to not just lay out  
19 the facts in this case as they've come in, but also, you  
20 know, looking at these other cases that are very  
21 comparable.

22                   The Gregerson case, you know, his guidelines are  
23 37 to 46 months with a cap of 60, and his facts are  
24 shockingly more incriminating than Khalil's case.

25                   **THE COURT:** When you say a cap of 60, you



1 mean the government agreed and the defendant agreed that  
2 any sentence up to 60 would be -- would be within the  
3 range by which the government would be precluded from  
4 withdrawing and the defendant likewise?

5 **MR. SHANKER:** Could not appeal.

6 **THE COURT:** Right.

7 **MR. SHANKER:** But it's based on --

8 **THE COURT:** Sixty was above the advisory  
9 range in that case.

10 **MR. SHANKER:** That's true, and basically what  
11 happened was the government preserved -- and I've admitted  
12 these into evidence, both of these Rule 11 agreements,  
13 your Honor -- but with Gregerson they preserved very  
14 specifically -- which didn't happen here -- but they  
15 preserved an enhancement that they were seeking under the  
16 guidelines that move it to 60 months.

17 **THE COURT:** So Mr. Waterstreet distinguishes  
18 that, as well as the Lanton case, as distinguishable  
19 because of the cooperation that was promised by the  
20 defendant largely.

21 **MR. SHANKER:** I don't know anything about any  
22 cooperation, and there's not the standard language in the  
23 Rule 11 that would make reference to any other agreement.  
24 So I don't know if there is or is not.

25 **THE COURT:** So if we don't know, how do I

1 treat that as a -- supporting your argument is essentially  
2 that the -- these are comparable for purposes of  
3 determining whether an unwarranted disparity in a given  
4 sentence would exist, right?

5 **MR. SHANKER:** Well, we have the four corners  
6 of the agreement, and I think that alone is telling.

7 Now certainly he could get a below guideline range  
8 sentence if there is a 5K in the case. That happens, but  
9 this is just based on his plea. That agreement, the four  
10 corners of that agreement, are about his plea to that  
11 charge. And remember, he was actually charged with  
12 possession of destructive devices with the intent to cause  
13 bodily harm, and, you know, actually appended to the  
14 agreement is the stunning list of weaponry that he  
15 possessed, and what we know about Mr. Gregerson is that he  
16 had these connections. He had real connections. He made  
17 similar statements, but he apparently was either able to  
18 back it up or intended to back it up, one of the two,  
19 unlike Mr. Rayyan.

20 And Mr. Lanton's guideline range was 15 to 21  
21 months, and it was only that high because he had three  
22 prior felony convictions, and again, this is somebody that  
23 threatened to bomb a police funeral while it was happening  
24 on a public Facebook page. So I mean, it was clearly  
25 intended to scare people.

1 Khalil's statements were private with this  
2 undercover, and they've certainly come back to haunt him,  
3 but, your Honor, he didn't intend to hurt anybody.

4 Your Honor, when we look at all of these cases,  
5 including Lajqi as well, when we look at the reports of  
6 the two government experts, and when we look at Judge  
7 Strong's opinion, when we look at the results of multiple  
8 search warrants, all the computers that were searched, all  
9 the uncontested facts about the undercover operation,  
10 which basically commodified a young man's desire for love  
11 into an inducement to join a jihad operation, I think,  
12 your Honor, the guideline range is appropriate. It allows  
13 for a sentence that is not greater than necessary, and it  
14 takes into account the detailed findings of psychologists  
15 who have spent far more time with Mr. Rayyan frankly than  
16 any of us, and this is their expertise.

17 And so, your Honor, I respectfully request a  
18 sentence of 15 months.

19 Thank you, your Honor.

20 **THE COURT:** All right. Thank you, Mr  
21 Shanker.

22 **MR. WATERSTREET:** I will try to beat that  
23 12:00 deadline, your Honor.

24 As to the waiver variance, it was a matter that  
25 was not brought up, but a plea offer was made in this

1 case, and the plea offer was for the government to be able  
2 to make an upward variance, and defense to make a downward  
3 variance. So he knew from the getgo that this was  
4 something that the United States wanted to do.

5 As to the statements of Judge Strong, your Honor,  
6 I encourage the Court to look at the -- look at that  
7 transcript, and I can provide it to the Court. Frankly,  
8 your Honor, there was no evidence at all presented about  
9 terrorism, and for him to suggest that Judge Strong made a  
10 finding that there was no terrorism involved, is just not  
11 factually correct. As a matter of fact, the defendant  
12 wanted to go into it, and his own attorney said no, no.  
13 Don't talk about the federal case.

14 As to my last comment, as Mr. Shanker was up here  
15 trying to convince the Court that the defendant didn't  
16 really have the intent, he suggested it was just one time  
17 that the defendant mentioned about this church incident.  
18 Well, that's not accurate either, because he made mention  
19 of it on January 8th, and again on February 1st just  
20 before he was arrested.

21 On February 1st, they were talking -- there was a  
22 discussion between the undercover and the defendant, and  
23 the undercover said is he, your father, scared because you  
24 told him that you wanted to do an istishhadi operation  
25 basically? He said, yeah, big time -- and I'm leaving out

1 the undercover's name -- especially when he found my gun  
2 and a bunch of bullets. He thinks that I will do  
3 something, and he's right. Oh, he did? I told him one  
4 time I wanted to do an istishhadi operation, and he's been  
5 watching me ever since. He looked through my car and  
6 found the mask, my gun and a bunch of bullets, and I told  
7 him it was just to go hunting for animals, but he didn't  
8 believe. Oh, you wanted to do an istishhadi operation for  
9 the kuffar church.

10 So this isn't an isolated incident. He referenced  
11 it again that he was stopped by his father because his  
12 father was watching him, because he said in the past --  
13 evidence, facts -- that he wanted to do martyrdom  
14 operation, and it's clear the family has done everything  
15 within their power to not advise authorities, and he is  
16 still a danger, your Honor, and because of that we think  
17 at least eight years is appropriate.

18 Thank you.

19 **THE COURT:** All right. Thank you.

20 **MR. SHANKER:** Your Honor, may I make two  
21 quick points?

22 **THE COURT:** Yes.

23 **MR. SHANKER:** Okay. Judge, as far as the  
24 findings of Judge Strong, my point is is that he found  
25 that Khalil tried to get the gun for self-defense

1 purposes. If you do get that transcript, you will see  
2 that he talks about the dangers of delivering pizzas in  
3 that particular neighborhood, and what had happened with  
4 certain employees, including himself. So that's all with  
5 that.

6 And the other thing that I wanted to point out  
7 too, is again, you know, Mr. Rayyan, Ray, the father,  
8 submitted an affidavit in the beginning of this case, and  
9 he said there was never any gun or any ammunition or any  
10 giant sword -- because these are all things that are  
11 talked about in the statement -- that he supposedly had in  
12 the car.

13 We know that's a false statement what Khalil said.  
14 We know it because he was under surveillance during that  
15 entire time. We know that he didn't have a gun. The  
16 government has not presented any evidence that he had a  
17 gun after November 15th, and we know that, and we also  
18 know from the results of the search warrant. They don't  
19 final any of these things.

20 So again, your Honor, the government's argument I  
21 think just underscores our point, that these are false  
22 statements. They are terrible statements, but they are  
23 false statements, and he did not intend to hurt anybody,  
24 your Honor, and that's why we request a guideline  
25 sentence.

1 Thank you, your Honor.

2 **THE COURT:** Thank you, sir.

3 Okay. Mr. Abu-Rayyan, the Court has had the  
4 opportunity to watch and listen to the tape that was  
5 provided, which included your statement to the Court.  
6 You're welcome, if you have any other comments that you  
7 would like the Court to consider before imposing sentence.

8

9 **THE DEFENDANT:** May I approach?

10 **THE COURT:** Yes, you may.

11 **THE DEFENDANT:** Judge Steeh, today is the day  
12 I get to speak on my own behalf. Today is also the day I  
13 get to show the government, the United States and you,  
14 Judge, just how remorseful I truly am. I've been looking  
15 forward to this moment for a long time, and now I am  
16 finally here.

17 Your Honor, I want you to know first and foremost,  
18 I never intended to hurt anyone. I never would hurt  
19 anyone. I couldn't hurt anyone.

20 Your Honor, my life and my family's life is  
21 forever changed. I have put my family through so much  
22 suffering, and I only have myself to blame. I am taking  
23 full responsibility for my scary, reckless and foolish  
24 things that I've said, and the things that I viewed.

25 Judge, I never meant any of the disturbing things

1       that I've said.

2               Judge, I know that I didn't tell the truth when I  
3       applied for the gun. However, your Honor, I want to make  
4       it perfectly clear, that was purely for self-defense only  
5       and nothing else. The only reason why I was trying to get  
6       a gun was for protection. Being the delivery guy in  
7       Detroit can be dangerous, especially at night. In the  
8       past, we had our drivers robbed, assaulted, and even  
9       almost killed. So by owning a legal firearm, it was to  
10      prevent those things from happening to me.

11              Your Honor, those pictures of myself carrying  
12      those guns was so stupid and reckless, it didn't have any  
13      meaning whatsoever.

14              Your Honor, my behavior caused embarrassment to  
15      myself, to my family, to my community, and my religion. I  
16      was so blind, that my actions was not only hurting me, it  
17      was hurting my family as well.

18              I messed up, your Honor. I have made the biggest  
19      mistake of my life. Every moment I am paying for what I  
20      did. In fact, not a month or a week, a day or even a  
21      second goes by when I don't kick myself for what I did. I  
22      am so ashamed, your Honor. I have humiliated myself. If  
23      I could give this world and everything in it to take back  
24      what I did, I would do that in a heartbeat. I just wish  
25      that I could take it all back, your Honor.



1 Judge, I was so depressed and really looking for  
2 an escape, that viewing those violent videos was as far  
3 from my real life. Looking back at it today, I wish I  
4 never laid my eyes on those videos. That conduct is not  
5 who I am, nor what I believe in. It's not. It's about  
6 peace, tolerance and acceptance.

7 ISIS has nothing to do with Islam. I have shamed  
8 my faith, and I have ashamed all the Muslim people. That  
9 mistake goes beyond any level of incarceration, and I have  
10 to live with that for the rest of my life.

11 Your Honor, I have brought grief to my family. I  
12 have brought all this unwanted attention. There are no  
13 words to describe how awful I feel about that. Every  
14 single member of my family has been affected by my  
15 mistake. If I had hours to talk about how my actions  
16 impacted my family individually, I would do that, but one  
17 member of my family who has been hurt the most by my  
18 wrongdoing is my father.

19 My father has blamed himself for what I have done.  
20 He has lost so much weight. He has aged. My father would  
21 always smile, but now because of me, that smile has been  
22 replaced with sadness and heartache. He doesn't have to  
23 tell me anything. I can see the pain in his eyes.

24 You know, your Honor, this whole experience will  
25 never be forgotten, but one particular moment that I will

1 never forget is when my dad came to visit me at the old  
2 Wayne County Jail. That was my first visit since I was  
3 arrested. We looked at each other through a glass. All  
4 of a sudden my father burst into tears, and every time I  
5 close my eyes, I remember that moment.

6 Your Honor, I don't think I can forgive myself for  
7 what I put him through.

8 Your Honor, I have the best dad. My old man came  
9 to America with a few dollars in his pocket and the  
10 clothes on his back. He struggled to get where he is at  
11 today, so that the family doesn't have to go through what  
12 he went through.

13 I love my dad so much. There is a special and  
14 unbreakable bond between a father and son. My dad is the  
15 definition of the American dream, and this is how I repay  
16 him. I so, so sorry dad. I promise to spend the rest of  
17 my life making it up to you.

18 Your Honor, there is nothing like losing  
19 everything to understand how much I had everything. I  
20 lost sight of the things that mattered most in life. I  
21 had a great job. I had a whole business I could call my  
22 own. I had an awesome pickup truck. I had a beautiful  
23 house, and above all I had the best family anyone could  
24 ask for.

25 I have learned a huge lesson. I will never

1 forget. When I came in, I was this ignorant, naive and  
2 immature kid. This journey has made a man out of me. I  
3 have had a lot of time to think about what I have done.  
4 Being locked in a cell has made me to never take anything  
5 for granted again. I have a new look on life. Freedom is  
6 a blessing.

7 Your Honor, I never intended to hurt anyone. I  
8 understand the FBI's concern about my behavior, and the  
9 things I was saying online. I completely understand your  
10 concerns but, your Honor, I never intended to hurt anyone.

11 Judge, actions speak louder than words. I cannot  
12 wait to move on with my life.

13 Your Honor, I have so many goals that I would like  
14 to accomplished. I want to go back to college. I want to  
15 marry a woman who loves me for who I really am, and that's  
16 a kind, sweet and gentle person, and most importantly, I  
17 want to make my family proud of me. I cannot wait to end  
18 this chapter of my life.

19 Your Honor, I would like to apologize to the  
20 United States. America has been great to my family and I.  
21 I apologize to all the Muslim people that I have  
22 embarrassed. I apologize to everyone to my offensive and  
23 foolish statements and behavior, and I a deeply apologize  
24 to my family, and Judge Steeh, I am so, so sorry.

25 Thank you for your time, Judge.

1                   **THE COURT:** All right. Thank you, sir.

2                   **MR. SHANKER:** Should we remain at the podium?

3                   **THE COURT:** No. I'm going to -- I have  
4 several things that have been brought to the Court's  
5 attention to read that I have not read as yet. I think  
6 that perhaps my reasoning and the disposition of the case  
7 would best be set forth in writing as well.

8                   So I will take the sentencing decision under  
9 advisement, and when the Court is -- when I've completed  
10 working on the findings and conclusions that will  
11 represent the sentence of the Court -- I have not done  
12 this before. So I don't know that it's sufficient for the  
13 Court to simply publish the reasoning, and then enter  
14 judgment without the parties present. I think I probably  
15 ought to have you all come back for that. Do you agree?

16                   **MR. WATERSTREET:** Yes, your Honor, because  
17 there are some other procedural matters, making sure the  
18 defendant understands his appellate rights, if there's any  
19 Bostick issue, anything of that nature that needs to be  
20 resolved.

21                   **THE COURT:** Right. You agree, Mr. Shanker?

22                   **MR. SHANKER:** I agree, your Honor.

23                   **THE COURT:** Okay. All right. Well, it maybe  
24 a week or so, but we'll contact both parties to identify a  
25 convenient date once we're when ready to go, okay?

1                   **MR. SHANKER:** Thank you, your Honor.

2  
3                   (Proceedings concluded.)

4                   -   -   -

5  
6                   **C E R T I F I C A T I O N**

7                   I, Ronald A. DiBartolomeo, official court  
8                   reporter for the United States District Court, Eastern  
9                   District of Michigan, Southern Division, appointed  
10                  pursuant to the provisions of Title 28, United States  
11                  Code, Section 753, do hereby certify that the foregoing is  
12                  a correct transcript of the proceedings in the  
13                  above-entitled cause on the date hereinbefore set forth.

14                  I do further certify that the foregoing  
15                  transcript has been prepared by me or under my direction.

16  
17                  s/Ronald A. DiBartolomeo

18                  \_\_\_\_\_  
19                  Ronald A. DiBartolomeo, CSR  
20                  Official Court Reporter

\_\_\_\_\_  
Date

21                  -   -   -